OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
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BEFORE THE PRESIDING DISCIPLINARY JUDGE C.LOPEZ
DISCIPLINARY CLERK

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** Bar No. 021097 Respondent.	**No. PDJ 2026-9010** **REPLY IN SUPPORT OF RESPONDENT'S MOTION IN LIMINE RE: TESTIMONY OF JUDGE MATA**

The law is clear – after the PDJ finds a lawyer has violated a rule, the case is not over. The lawyer is still entitled to present mitigating evidence.

When deciding punishment, Supreme Court Rule 58(k) requires the PDJ to follow the ABA Standards; "Sanctions imposed against lawyers and legal paraprofessionals shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions*." As noted in Respondent's initial motion, the ABA standards mandate that either the presence or absence of a dishonest motive is relevant as an aggravating or mitigating factor.

Here, Respondent maintains he is entitled to offer evidence showing that every statement he made regarding Judge Mata was entirely true. Truthful statements cannot, by definition, be made with a "dishonest motive". On the contrary, truthful speech is strong evidence of the *absence* of a dishonest motive, and the PDJ is required to consider that mitigating factor per ABA Standard 9.32(b).

Indeed, as Respondent's motion noted, Comment 1 to ER 8.2 specifically notes: "Expressing honest and candid opinions on … [the integrity of a judge] contributes to improving the administration of justice." Thus, Respondent maintains he is entitled to offer evidence showing exactly that – that he criticized Judge Mata, but that his criticism was honest and candid, not false.

The State Bar's response to this point is a bizarre circle of faulty logic: "Facts Respondent may learn in the future, however, have no bearing on what his motive was when he made the blog posts in paragraphs 103 to 107 of the Amended Complaint back in 2024." Resp. at 2. This argument misses the point entirely.

The point is this – speech criticizing a judge using false statements are **categorically** different from criticism that is **entirely true**. False statements (a/k/a "lies") cause harm in a completely different way than true statements. In fact, true statements cause no harm at all, at least the legal and constitutional sense; "Truth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned." *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964) (also explaining the First Amendment, as interpreted in *New York Times v. Sullivan*, 376 U.S. 254 (1964) "absolutely prohibits punishment of truthful criticism ….")

Again, that point is specifically recognized in Comment 1 to ER 8.2 which makes *exactly* that distinction: "Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice."

Based on these points, it is evident the State Bar is misreading ER 8.2(a) to claim it prohibits two things:

1.) **Knowingly false** statements regarding the integrity of a judge; *or*

2.) **ANY** statement – ***true or false*** – if made with "reckless disregard".

The problem with the State Bar's position is that it both misreads the language of ER 8.2 *and*, under the Bar's erroneous interpretation of that rule, ER 8.2 would be facially unconstitutional. This is so because *truthful* speech (whether uttered recklessly or carefully) is squarely protected by the First Amendment; "The First Amendment does not protect intentionally false statements and false statements made with reckless disregard for the truth." *In re Olin*, 2024 WL 6881775, *7 (Cal.Bar Ct. 2024).

In short, the *correct* reading of ER 8.2(a) is as follows—the rule only prohibits:

1.) **Knowingly false** statements regarding the integrity of a judge; *or*

2.) **A false** statement (even unknowingly) if made with "reckless disregard for the truth".

This was the express holding of the Ninth Circuit in *Standing Committee v. Yagman*, 55 F.3d 1430, 1438 (9th Cir. 1995) where the Court explained unequivocally, "attorneys may be sanctioned for impugning the integrity of a judge or the court only if their statements are false …. It follows that statements impugning the integrity of a judge may not be punished unless they are capable of being proved true or false." In addition, in this context, "reckless disregard" is a term of art with a specific meaning: "reckless disregard is shown if the attorney had no reasonable factual basis for making the statements, considering their nature and the context in which they were made." *Olin*, 2024 WL 6881775, *9.

Here, as Respondent has argued repeatedly, his statements regarding Judge Mata were not false; they were entirely true. In its unlawful effort to punish Respondent for speaking honestly, the Bar has twisted and misrepresented this point by suggesting Respondent's *only* defense was that he mistakenly "*believed*" his statements to be true (even though they were, in fact, false). That was not, and has never been, Respondent's position. Again, Respondent's position is that his statements about Judge Mata were completely true as a matter of fact in every respect.

The PDJ has, thus far, agreed with the Bar's position that truth is irrelevant as a defense to an ER 8.2(a) claim. Obviously Respondent respectfully, but forcefully, disagrees.

However, even if the Bar's position was correct, that would apply only to the issue of liability, not punishment. The ABA Standards specifically say so—a lawyer who lies, and thus acts dishonestly, deserves a more serious punishment than a lawyer who tells the truth. And in this case, Respondent told the truth and nothing but the truth. Judge Mata's testimony will directly and conclusively prove that point, thus constituting extremely strong mitigation evidence.

As a matter of common sense, and as the ABA Standards provide, it is a categorically different thing for a lawyer to lie about a judge compared to a lawyer who expresses honest and truthful criticism. Judge Mata's testimony is directly relevant to the issue of whether Respondent acted honestly or dishonestly. The PDJ is required to permit Respondent to introduce this evidence for purposes of mitigation, even where liability has already been shown. For those reasons, Respondent's motion must be granted.

Respectfully submitted October 12, 2026.

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CERTIFICATE OF SERVICE

Original filed and COPY of the foregoing emailed
October 12, 2026 to:
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